

May 21st, 2007  
Commission's Secretary  
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Federal Communications Commission  
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Re: WC Docket No. 06-210  
CCB/CPD 96-20

**Ex-Parte Comments of 800 Discounts, Inc., One Stop Financial, Inc.,  
Winback & Conserve Program, Inc. and Group Discounts, Inc**

Dear FCC

The following is mostly from 1995 and 1996 transcripts that petitioners recently found. Obviously the FCC, the Third Circuit, the DC Circuit and Judge Bassler did not have the luxury of these transcripts. Petitioners had asked AT&T for a copy of these transcripts but AT&T ignored petitioners. After the FCC sees the excerpts from the transcripts the FCC will clearly understand why AT&T ignored petitioner's requests for them. AT&T's concessions that S&T obligations stay with the plans--- as the FCC 2003 decision stated---- are overwhelming. The FCC will also see the delay scam that AT&T's Counsels Mr. Whitmer, Mr. Brown, and Mr. Barillari attempted to pull on the Court.

To follow is **exhibit A** which is the November 28<sup>th</sup> 1995 certification of Carl Williams who was AT&T's Branch Manager for Specialized Markets-Credit and Collections--Overseeing Aggregators/Resellers.

Previously Mr. Shipp addressed Mr. Williams November 1995 certification from the standpoint of showing that petitioner's plans had already met its fiscal year commitment at the time of the "traffic only" transfer by the tenth month---- by an amount in excess of \$2,000,000 ----based upon Mr. Williams own evidence presented. (see CCI's comments 2/14/07).

AT&T countered and stated that although the over commitment was met as a combination of all the plans AT&T would look at each plan that had the shortfall obligations remaining with it. Petitioners then filed and noted 2 main points to counter AT&T's missing of the Mr. Shipp point:

A) The CSTPII/RVPP plans that were over commitment could be merged with those that were under commitment at any time prior to the fiscal year end when shortfall was applied.

B) Petitioners also noted that the whole issue of whether the plans were over commitment at the time of the Jan 1995 “traffic only” transfer was totally moot because –as AT&T conceded--all the plans were pre June 17<sup>th</sup> 1994 grandfathered and thus were immune through at the very minimum June of 1996.

What petitioners would like the Commission to focus on with this filing is the **obvious fact** that AT&T’s long time branch manager Mr. Williams conceded that the plan obligations (shortfall) remained with the plans after “substantially all” of the end-user locations were transferred :

AT&T’s Williams November 28th 1995 certification to Judge Politan’s District Court, Page 2:  
Here as **Exhibit A**

3. I understand that there are eight plans for which CCI is the customer of record and from which CCI wishes to transfer substantially all of the locations under the plans. [ ] Attached as exhibit B is a chart showing **projected shortfall under the plans** if most or all of the locations under the plans were transferred on Dec. 1 1995.

AT&T’s Williams Nov. 28<sup>th</sup> 1995 certification to Judge Politan’s District Court Page 3 Para 1:  
Here as **Exhibit A**

5. Exhibit B demonstrates the estimated shortfall for five of these eight plans if all or **substantially all of the locations under the plans are transferred** on December 1st 1995.

6. A second increased risk for AT&T in the event of the CCI/PSE transfer is the likelihood that **CCI would have a reduced ability to satisfy any potential shortfall obligations** to AT&T because it would be transferring a significant asset (the revenue stream) to PSE. Although any reduced ability is difficult to quantify, AT&T “**should insist**” on a **deposit in excess of \$13.293 million** representing the increased risk to AT&T plus the increased risk **that CCI would be less able to satisfy any “tariffed obligations” to AT&T.**

Mr Williams’s conceded that the “traffic only” transfer would result in the **tariffed obligations remaining with CCI.**

Mr. Williams also acknowledged in his first certification back on March 19<sup>th</sup> 1995 that AT&T **only** had the ability to ask for increased deposit requirements if the aggregator **was increasing its commitment.** AT&T did **not** have the ability to ask for deposit requirements if the aggregator

**already had a commitment and its revenue was either eroding or temporarily being placed elsewhere** to enhance its gross margins as in the case at hand.

In fact Mr. Williams testified to Judge Politan on March 23<sup>rd</sup> 1995 that he wasn't even asked to evaluate the "traffic only" transfer to PSE. This is of course because the recipient (PSE) was not increasing its commitment, further verifying that the plans revenue commitment does not transfer.

March 23<sup>rd</sup> 1995 Oral Argument **Here as Exhibit B:**

- 4 Mr. Yeskoo Q Were you ever asked to analyze the transaction  
between  
5 Winback & Conserve back to PSE?  
6 Williams A No. I wasn't.

However Mr. Williams **under penalty for perjury** certified in his November 28<sup>th</sup> 1995 certification that AT&T **"should insist"** on a deposit requirement on the CCI plan for the CCI to PSE "traffic only" transfer.

Mr. Williams certified in March 1995 (8 months earlier) that the tariffs deposit requirements did not allow for an increased CCI deposit requirement unless it was an increase in commitment--- which of course was not happening.

Mr. Williams -----upon cross examination by petitioner's counsel Mr. Helein----- conceded that AT&T's legal department, **"helped"** him" write his certification.

March 23<sup>rd</sup> 1995 Oral Argument **Here as Exhibit C:**

- 9 BY MR. HELEIN:  
10 Q Did you personally prepare your certification, Mr.  
11 Williams?  
12 A Well, I prepared it with the help of others.  
13 Q Who else did you prepare it with?  
14 A **My attorneys.**

AT&T later conceded a year later in 1996 that shortfall deposit requirements were not applicable to petitioners "traffic only" transfer. AT&T was forced to lie to the District Court in November 1995 to prevent the traffic only transfer from taking place -a fact the FCC 2003 decision noted.

See Petitioners 9/27/06 filing at exhibit B on page 6 footnote 44:

On a separate point, we note that the deposit provision of AT&T's tariff is not implicated here. In their first and third requests, petitioners seek, *inter alia*, declarations that AT&T had no basis to require a deposit to effect the movement of traffic without the associated plans. See Petition at 7-8. **AT&T, however, does not argue that any deposit was required to effect the movement of traffic from CCI to PSE and notes that the deposit requirement related to the earlier transfer from the Inga Companies to CCI.** See Opposition at 9 n.8.

As the FCC is aware AT&T later did add shortfall deposit requirements to section 2.1.8 on November 9<sup>th</sup> 1995 on a prospective basis—the same month as Mr. Williams's second District Court certification.

Of course Mr. Williams also had been aware of the shortfall deposit requirement tariff change much earlier than November 1995 for a couple of reasons:

1) the shortfall deposit requirements were part of Tr. 9229 which replaced Tr. 8179 in **June** of 1995 when AT&T lost its substantive Cause Pleading. Deposit requirements were an integral part of Mr. Williams job responsibilities, so of course he was intimately involved in this tariff change.

2) Mr Williams was also a witness during the March 1995 two day hearing when AT&T's counsel also explained that S&T obligations stay with the plan on a traffic only transfer:

**March 21, 1995 transcript before District Court Judge Politan**

AT&T's counsel Fred Whitmer cross examining of petitioners president Mr. Inga----- making the correct point that Winback & Conserve would continue to be obligated for S&T obligations:

Page 106 Line 13 **Here as Exhibit D.**

Whitmer: **Mr. Inga**, you know, do you not, that if **the service, except for the home account**---or **Mr. Yeskoo** called it the "lead account" -- is transferred to PSE, **the shortfall and termination liabilities remain with Winback & Conserve**, isn't that correct?

Mr. Yeskoo was counsel for CCI and had been counsel for PSE, the intended recipient of the traffic. Mr. Yeskoo had earlier explained to Judge Politan that PSE had received over 20 "traffic only" transfers from CSTPII/RVPP plan holders to PSE without being required to assume S&T obligations using the exact same AT&T TSA form that CCI and PSE again used. Mr. Yeskoo explained that in those 20+ cases just the "lead" account remained with the transferors plan to

designate it as a “traffic only” transfer as opposed to a plan transfer.

Yes Mr. Whitmer’s statement was correct—As the FCC’s 2003 Decision indicated---the S&T obligations would stay with CCI and the Inga Companies even if substantially all the service was transferred “except” for the lead/home account—i.e. the 181 number that was indicated on each of the TSA’s remained with CCI---see exhibit F to petitioners 9/27/06 filing)

The reason why Mr. Whitmer was conceding how 2.1.8 worked was because he was arguing that the Inga Companies were not going to be able to meet its commitment. Mr. Whitmer of course did not know that 11 years later AT&T would finally concede in its Dec 20<sup>th</sup> 2006 FCC brief, that AT&T that all the plans were still pre June 17<sup>th</sup> 1994 grandfathered and thus immune from S&T liabilities. Mr. Whitmer also did not realize at the time that the issue of which obligations transfer would become the focus despite the overwhelming evidence in the record showing plan obligations staying with the plan.

Obviously Mr. Williams was very aware being involved in the case, that S&T obligations did not transfer on “traffic only” transfers as he acknowledged in his November certification to Judge Politan.

When AT&T added the November 9<sup>th</sup> 1995 deposit requirements (exhibit B in petitioners 5/7/07 filing) it of course required---- only the transferor----- to put up the deposit requirements not the transferee because AT&T’s Manager Mr. Williams clearly understood that S&T obligations did not transfer on a traffic only transfer. If S&T obligations transferred to the transferee on a “traffic only” transfer then obviously the deposit requirements would have been tarified to the transferee; but of course that was not the case as Williams certified to Judge Politan.

Mr. Williams clearly understood that S&T obligations stayed with the transferor on a “traffic only” transfer at the time of his November 1995 certification because Mr. Williams’ department was involved with the shortfall deposit requirements of Tr. 9229 that specified S&T obligations stayed with the plan.

Additionally Judge Politan also had the March 1995 Richard Meade certification (exhibit N in petitioners 9/27/06 filing) which also certified to Judge Politan that AT&T was going to inflict deposit requirements upon the revenue commitment of the transferor when it transferred away “traffic only”. Mr. Meade’s certification explained that the deposit requirements upon the transferor were AT&T’s solution which addressed the separation of so accounts form the plan commitments. Mr. conceded that this was how 2.1.8 worked for everyone, but because the tariff change was new it would not be determinative of the CCI-PSE traffic transfer due to the fact that

the Tr 9229 change was a prospective tariff change.

AT&T 12 years later creates a defense that incredibly states that Judge Politan issued an injunction on a so called “proposal” that was outside what 2.1.8 called for; however AT&T’s Messrs.: Meade, Whitmer, and Williams (not to mention petitioners counsels and business executives) all explained that S&T obligations stay with the plan on a “traffic only” transfer. Obviously AT&T could not make its bogus Fraudulent Use claim without conceding that S&T obligations did **NOT** transfer from the plans.

Furthermore AT&T used its bogus “proposal” defense for Mr. Whitmer’s 11/28/1995 concession that PSE has no tariffed obligation to assume S&T obligations, but the above additional concession to Judge Politan by Mr. Whitmer again further destroys that AT&T “proposal” nonsense.

More AT&T Counsel Whitmer Concessions are seen in AT&T’s Counsel Mr. Whitmer’s March 30<sup>th</sup> 1995 brief to the District Court page 2. **Here as Exhibit E**

In response, plaintiffs have tried from the outset of this action to convince this Court **that their liabilities to AT&T are illusory**, thereby hoping to persuade the Court to order AT&T to permit the two-step transfer without either requiring CCI to furnish a security deposit or **requiring PSE to accept the plans (and all of their liabilities) in addition to the traffic.**

Notice Whitmer doesn’t say requiring PSE to accept the plan obligations. He states requiring PSE to accept the plans. He understood that plan obligations stay with the plan.

More Whitmer concessions: Oral Argument 3/8/95 Judge Politan speaking to petitioners counsel quoting Mr. Whitmer’s brief: **Here as Exhibit F**

Judge Politan: Wait. Let me get to page 23 of Mr. Whitmer’s brief. He Says: “If PSE took assignment of **the plans** from Winback & Conserve, **thereby accepting shortfall and termination liability**, AT&T would effect transfer.”

More Whitmer concessions Oral Argument 3/8/95 page 13 -14: **Here as Exhibit G**

MR. WHITMER: The reason is CCI originally was going take the **plans**, your honor; **This is an important distinction.** They were going to take **the plans** so that the shortfall and termination liability----- **the shortfall and termination liability would**

**have followed the plans to CCI.** It was because CCI was financially incapable of satisfying shortfall and termination that we, AT&T, demanded a security deposit of \$13 million.

Yes Mr. Whitmer conceded that there was a **distinction** as Mr. Carpenter stated to the Third Circuit.

During oral argument Judge Politan was also told by AT&T's senior counsel Mr. Barillari that the shortfall and termination obligations were associated with the plan not the traffic.

Oral Argument 3/8/95 page 48 **Here as Exhibit H**

THE COURT: Each **plan** has within it its own termination provision.

MR. BARILLARI: Yes. And shortfall.

THE COURT: Okay. All right.

Notice how these excerpts associate the plan liabilities with the **plan**. Additionally notice that the option that Mr. Whitmer provides to get the **plan** obligations transferred is the transfer of the entire **plan** (just like AT&T's Tr. 8179 proposal at exhibit L of petitioners 9/27/06 filing).

The obvious reason why Mr. Whitmer didn't suggest that CCI transfer just the traffic and "**all the obligations**" is that there is no such animal.

When the DC Circuit accurately understood that 2.1.8 allows both "traffic only" transfers as well as entire plan transfers the con artist counsel at AT&T had to create a transaction that never existed of transferring "all obligations" but not the plan!!! This is of course why AT&T can not produce any evidence, because none exists of this animal!

### **More Relevant Excerpts from March 8<sup>th</sup> 1995 Oral Argument**

On March 8<sup>th</sup> 1995 in preparing for the March 21<sup>st</sup> and March 23<sup>rd</sup> two day hearing Judge Politan wanted the following from AT&T: Transcript page 51

Judge Politan: The next thing I want to know is whether or not, over the course of the last two or three years, there have been **any transfers which have been permitted of aggregators of AT&T** and, if so, **what the circumstances are,** if any?

MR. WHITMER: There have been literally hundreds, your Honor. **Literally hundreds.**

...

page 52 and 53 Oral 3/8/95 continued line 18 **Here as Exhibit I**

THE COURT: In other words, if you're treating them the same as you've treated everyone else, I'd be interested in that. If you're seeking to **extract from them something more that what your normally would extract, I would like to have that information.** The only way I'm going to get that is by asking for the raw data.

MR. WHITMER: I can anticipate part of the answer to the question, your Honor. I'll say it now because I don't want to seem to have waited to say it later. \$54 million of commitment is a very big number and the tariff provides for the ability to get three months of security. My belief would be that security deposits will be a smaller number on a regular basis than the security that was deposited here.

THE COURT: Would this be the biggest account that you have?

MR. WHITMER: \$54 million is one of the largest commitments.

MR. BARRILLARI: Your Honor, it would certainly be one of the largest transfers we've ever done.

THE COURT: That could very well be. It's possible. I'm not treating it lightly. This not like transferring a Ford car to one person to another. We're talking about a large operation. I understand that.

MR. WHITMER: But there are literally - - **my guess, is hundreds, if not thousands, of transfers that have happened among aggregators and aggregations plans.**

Judge Politan was asking AT&T to bring in evidence. AT&T senior counsel Ed Barrillari concedes to the District Court that AT&T has **thousands of transfers among aggregators**—not even considering non aggregator commercial customers. Despite Judge Politan asking to see these transactions AT&T of course provided zero evidence.

Oral 3/8/95 page 54 continued line **Here as Exhibit J:**

THE COURT: I'll put that limit. Twenty million.

I'm certainly not interested if you transferred a \$500,000 amount, annual \$500,000 account. Because, obviously, it seems to me the considerations are somewhat different for a \$50 million account than a \$500,000 account. At least in the \$20 million range or in the \$10 million range. If you can give ten and up, I'd appreciate it.



**MR. BARILLARI: But, your Honor, the same requirements would apply for a 500,000 as a 50 million - -**

**MR. WHITMER: In terms of the tariff.**

Needless to say AT&T did not provide Judge Politan with one sample of a “traffic only” transfer in which S&T obligations transferred despite claiming that there were many thousands.

At least AT&T counsel Mr. Barillari and Mr Whitmer conceded that the tariff worked the same no matter what the dollar amount was. Mr. BARILLARI bogusly asserted that 2.1.8 required 3 months worth of shortfall deposit requirements. The facts are that all of these other “thousands of aggregator’s transfers” never had S&T obligations transfer----- neither prior to, nor after petitioners denied transfer. AT&T was only basing the transfer on size. Size under the tariff doesn’t matter as Mr. Barillari conceded.

**Relevant Excerpts from March 21<sup>st</sup> 1995**  
**Hearing in District Court:**

3/21/95 Page 34 Line 3 **Here as Exhibit K**

3 MR. WHITMER: First of all, your Honor, Winback &  
4 Conserve voluntarily subscribed to all of these plans and  
5 took on the obligations and received promotional credits  
6 from AT&T to do that. When it did that, Winback &  
7 Conserve had existing traffic -- not as Winback &  
8 Conserve, **but Mr. Inga had other traffic which he was able**  
9 **to transfer over to these new plans.**  
10 He started some of those plans not from, shall we  
11 say, ground zero, **but was able to move traffic that he had**  
12 **on other plans with AT&T.**

Mr. Whitmer makes the point for petitioners. One Stop Financial, Inc. (OSF) took out its plans with AT&T in 1989. In 1993 AT&T account executive Joseph Fitzpatrick solicited OSF to increase its commitment to AT&T. Due to the fact that OSF was at the highest tariffed commitment level (\$33 million) -----but had revenues over double that commitment----- so OSF’s owner incorporated the three additional petitioners. Each of the three new corporate entities subscribed to commitments. A large part of the revenue that went into these new companies came as Mr. Whitmer pointed out---from transferring “traffic only” from OSF to the other three companies.

Obviously there was no transfer of OSF's plan obligations to any of the three new corporations; but according to AT&T's bogus theory there must have been. According to AT&T's bogus theory the three new corporations would have each assumed all of OSF's entire revenue commitment; however the 3 new corporations (i.e. the traffic only transferee's) did not further increase its commitment.

3/21/95 Page 40 Line 13 Whitmer explains when AT&T increases deposit requirements: Here as Exhibit L

13     Because what the tariff does, in terms of having  
14     deposit, is saying if someone is going to "take on an  
15     obligation" and we are insecure as to that party's ability  
16     to carry it out, we have the right to demand security.  
17     Instead of having some archaic calculation that is  
18     dependent upon each particular circumstance, we have  
19     defined our maximum tariff rights for deposit at three  
20     months.

Due to the fact that the transferee does not assume any plan obligations on a "traffic only" transfer, AT&T's shortfall deposit requirements never applied to the transferee because the transferee does not receive increased plan obligations on a "traffic only" transfer--- only the transferor after Nov 1995 due to tariff transmittal 9229 was subjected to possible shortfall deposit requirements. The FCC 2003 decision of course noted AT&T's position that "traffic only" transfers do not raise deposit concerns.

3/21/95 Page: 47 Whitmer: Here as Exhibit M

3     THE COURT: If PSE gets more customers, it still  
4     retains that tariff, doesn't it?  
5     MR. WHITMER: It can put new service on the  
6     tariff.  
7     THE COURT: It could put 100 zillion dollars on  
8     it.  
9     MR. WHITMER: From your lips to God's ears.  
10    THE COURT: It could.  
11    MR. WHITMER: Yes, sir.  
12    THE COURT: Then I get back to the simple  
13    question. The same question as the hypothetical.  
14    Why can't it accept a transfer of \$54 million  
15    worth of customers if -- if they unequivocally fill out

16 the papers which are A and B under 2.1.8? Why can't they  
17 do that? Are they bound to go out and find new customers?  
18 Can't they grab customers that other people have and put  
19 them in their system?

Judge Politan recognized that there was no difference between adding accounts to a transferee plan by selling new business or by having them transferred to the transferee. The transferor's plan was the entity that had to manage its plan commitment, which only made sense.

In regards to how to obtain a contract tariff from AT&T:

March 21<sup>st</sup> Page 59 **Here as Exhibit N**

1 MR. YESKOO: No. We don't. Our goal here is to reunite them and CCI with a contract tariff with AT&T.

2 THE COURT: That got to be by negotiation and not by --

3 MR. YESKOO: **It will be by litigation.**

Negotiations have been fruitless. **The only way one got a contract as a reseller is by litigation.**

4 THE COURT: How do you do it through litigation?

5 MR. YESKOO: Two ways.

6 Number one is go to the FCC. The FCC will block their latest filing, tariff filing, and jawbone them into giving you some.

7 The other way is suing them. People have gotten them both ways. It has never been achieved -- when I say, **a good --a commercial tariff has never been achieved through negotiation.**

8 For a reseller --

9 THE COURT: **Mr. Whitmer, you laughed very well with your eyes.**

Yes indeed, Judge Politan recognized that AT&T was engaging in discrimination as to the ability to obtain a contract tariff.

**CCI's president Larry Shipp On the Stand: Questioned by**  
**AT&T's Counsel Fred Whitmer**

3/21/95 Page 76 Oral Argument: **Here as Exhibit O**

6 Whitmer: Q At the time you accepted the assignment of the Winback

7 plans, you expected to hold onto all the service and use

8 that service to try to satisfy the commitments. Isn't

9 that right?  
10 A Yes. And to negotiate a contract tariff with AT&T  
11 with the other companies.  
12 Q You recognized when you accepted the plans and the  
13 concomitant responsibility for shortfall, termination you  
14 were going to use the service on those plans to satisfy  
15 the shortfall termination charges, if any, correct?  
16 A I recognized I had a tariff obligation under those  
17 plans. Yes.

Whitmer clearly states shortfall and termination are associated with the plan.

3/21/95 Page 79 Oral Argument: **Here as Exhibit P**

8 Whitmer: Q As a result of your inability to reach a contract  
9 tariff with AT&T that is when you devised the transaction  
10 to send only part of the service of the Winback plans to  
11 PSE, isn't that correct?  
12 A No, sir.  
13 Q When did you do that?  
14 A I did it as a mechanism to prolong the life of the  
15 plans for the absolute desire for a working relationship  
16 with AT&T. And recognizing that we had a responsibility  
17 and a commitment under the tariff, we structured our  
18 arrangement with PSE so that we could move the traffic  
19 back, when appropriate to meet the commitments.  
20 Q **You understood, did you not --at least you thought**  
21 **you understood --if you transferred only the service but**  
22 **not the plans, PSE would not have any liability for**  
23 **shortfall termination? Correct?**

Above Whitmer makes it explicit the plan liability stays with CCI and does not go to PSE's CT 516

Find **here as Exhibit Q** 3/21/95 Oral page 79-82:

AT&T's Whitmer questioning CCI's president Mr. Shipp

24 Q During the time that you did that, sir, the shortfall

25 and termination charges -- withdrawn -- the liability for  
1 shortfall and termination under the plans would stay with  
2 Winback & Conserve, is that correct?  
3 A **No, sir. It would stay with CCI. Under joint and**  
4 **several liability with Winback & Conserve.**  
5 Q CCI has no assets, correct?  
6 A No. I think we have a lot of assets. We own two  
7 companies.  
8 Q CCI doesn't own the companies, does it?  
9 A Well, in a technical sense, that's correct. But the  
10 same shareholder owns all three companies.  
11 Q In a technical sense, Mr. Shipp, it was the service  
12 usage on the plans that satisfies the revenue commitments  
13 that a reseller makes, is it not?  
14 A No.  
15 Q It's not the service that is used on a plan that  
16 satisfies the revenue?  
17 **A It is on plans from June 17 going forward. It is**  
18 **certainly that. For plans pre-June 17 it is time and not**  
19 **revenue that satisfies the commitments under the plan.**  
20 Q But, also there is a revenue commitment on all eight  
21 of the plans that you sought to have transferred to CCI,  
22 is there not?  
23 A Yes, sir.  
24 Q And **that revenue commitment** for those plans is  
25 satisfied by the service usage that is logged on those  
1 **plans**, correct?  
2 A It is satisfied by time. Not by the service usage  
3 associated with those plans.  
4 Q The time means the usage on the network, the phone  
5 calls that are made, the charges that are incurred as a  
6 result, correct?  
7 A No, sir. Not under the way the tariff was written.  
8 Q You knew, did you not, however, there were dollar  
9 commitments that had to be made, correct?  
10 A I knew that there were dollar commitments that had to  
11 **be retired under the tariff.** Yes, sir.  
12 Q When you say "retired under the tariff," you mean that

13 you knew there was a possibility of retiring those  
14 commitments by making even greater commitments, is that  
15 correct?

16 A That was one of the ways.

17 Q What is another way?

18 A Another way is to discontinue the plan without  
19 liability into another contract tariff.

20 Q That is --

21 A Which is what I had tried to do.

22 Q Forgive me for interrupting you, Mr. Shipp.

23 That was -- one of the other ways was by folding  
24 it into another commitment, is that correct?

25 A Yes.

1 Q The contract tariff?

2 A Yes. It doesn't have to be -- Mr. Whitmer, just for  
3 one second. It doesn't have to be another plan, CSTP  
4 plan. It can be any other plan.

5 So there were numerous opportunities on the  
6 market today for that kind of a transaction.

7 Q The question is: In order to discuss without  
8 liability, Mr. Shipp, you knew you had to be able to move  
9 those plans into another plan, either CSTP plan or some  
10 other contract tariff or some other service plan which had  
11 a greater commitment?

12 A Yes.

13 THE COURT: Get a better deal?

14 THE WITNESS: Yes.

15 THE COURT: GBD?

16 THE WITNESS: Yes.

17 **THE COURT: I understand this.**

18 Q And you knew that in order -- follow what I'm saying,  
19 please, Mr. Shipp.

20 **In terms of satisfying the revenue commitments on**  
21 **the plan** -- forget about discontinuation without  
22 liability. **In order to satisfy the revenue commitments of**  
23 **the plan**, the plan looks to the service usage that is  
24 generated under the plan, isn't that right?

25 A **That is one way.**

It is obvious from the above questioning of CCI's Mr. Shipp that there were multiple ways to retire the commitment, which as AT&T counsel explicitly stated, would remain with the plan. Mr. Shipp explained that not only revenue would satisfy the commitment but moving the plan into a new CT or using pre June 17 1994 restructuring would also extinguish revenue **the plans revenue commitment.**

Page 94 -99: Petitioners president Mr. Inga takes the stand initially questioned by its counsel Mr. Meanor Exhibit R

25:MeanorQ Have you on prior occasions transferred some but not  
1 all of one of your plan's customers to another plan?

2 A Yes One Stop Financial was obviously the first company  
3 I started. I had all my accounts on one corporation.  
4 When Mr. Fitzpatrick told me to take on more  
5 corporations to obtain more promotions and make more of  
6 commitment to AT&T, when we were just going into that  
7 portability environment, I transferred all of the -- used  
8 the transfer and service agreement form to transfer  
9 accounts from One Stop Financial to distinctly separate  
10 corporations which I did not guarantee any of the  
11 liabilities. Winback & Conserve, 800 Discounts and Group  
12 Discounts. The Transfer of Service Agreement form was  
13 used to move those locations. The plan was not moved.  
14 Just the locations.

15 Q **Is that the same TSA or transfer of service form that**  
16 **was used to transfer some but not all of the Winback end**  
17 **users for service through PSE?**

18 A That form in six years has never changed. That is the  
19 form that is used for transfer of plans and transfer of  
20 accounts for name changes, corporation changes, et cetera.

21 Q Was it the same form, identical form, that was used to  
22 attempt to transfer some of the Winback accounts but not  
23 all of them for service through PSE? Was it the same  
24 form?

25 **A The same form.**

1 Q When you used that TSA form, Transfer of Service  
2 Agreement, on prior occasions to transfer end users for  
3 service through one of your companies to another, were you  
4 ever asked to put up a deposit, security deposit?

5 A No. Not only did I do it to my own corporations, but  
6- I had transferred hundreds and hundreds of accounts to  
7 other aggregators' plans and never was there a security  
8 deposit.

9 Q Tell us about that.

10 A Linvan and Ameratel 800. I transferred approximately  
11 200 accounts to his plan, which was called Ameratel 800 at  
12 that point.  
13 That was --he did not take up a security deposit  
14 at all.  
15 THE COURT: What were the value of the services  
16 for a year on those 200 accounts?  
17 THE WITNESS: Maybe each location was \$250.  
18 Maybe 40 or \$50,000 in traffic.  
19 THE COURT: Forty or \$ 50,000. It's not 54  
20 million.  
21 THE WITNESS: Neither was the transfer of One  
22 Stop over to Winback.  
23 THE COURT: I understand. Go ahead.  
24 Q Yes?  
25 A They were in shortfall.  
1 Q When you say "transfer an account," you mean transfer  
2 customers, end users?  
3 **A Two transfers. One is of the account and the other of**  
4 **the plan.**  
5 Q Linvan was what?  
6 A They were a manager of a company called Ameratel 800.  
7 Q Did you transfer any accounts from one of your  
8 companies to any other company than Mr. Linvan's company  
9 if you know, if you can recall? If you don't remember,  
10 you don't remember.  
11 A I don't remember.  
12 Q When did the transfer of 200 or so accounts to Mr.  
13 Linvan's company take place?  
14 A The end of '93, I believe.  
15 Q Did AT&T make any objection to the transfer of those  
16 accounts?  
17 A Not at all.  
18 Q Were they accepted by AT&T?  
19 A Yes. I also transferred accounts between my  
20 corporations all the time.  
21 Q No deposits?  
22 A Never.  
23 Q No objection?  
24 A No.  
25 MR. MEANOR: Thank you.  
1 THE COURT: **Did you transfer all obligations,**  
2 **both the plan and the --**  
3 THE WITNESS: **No.**  
4 THE COURT: -- and the service?  
5 Q **Just the accounts get transferred?**  
6 A **Every day they do this at AT&T, accounts are moved**  
7 **every day. In fact, in the tariff AT&T put a provision in**  
8 **there when you transfer an account from one CSTP II to**



9        another CSTP II, AT&T charges \$50 to move that.  
10       Because there are so many thousands of accounts  
11       being moved, AT&T said: Wait a minute. Put a \$50  
12       location charge on this move. That was done back in the  
13       middle of -- maybe at the beginning of 1993. In that  
14       area. Location charge because of the tremendous amount of  
15       moves.

3/21/95 Oral/ AT&T's Whitmer cross examination of Petitioners president: Page 101-107:

**Here as Exhibit S:**

22       Q You've been paid promotional credits on the CSTP II  
23       plans, correct?  
24       A My companies have been, yes.  
25       **Q In point of fact when you started these companies, you**  
1       **moved traffic from One Stop Financial on to those plans;**  
2       **isn't that correct?**  
3       A **You Used a Transfer of Service Agreement to move**  
4       **account locations. Not plans.**  
5       Q You created those CSTP II plans, created the companies  
6       to take the service under those CSTP II plans in part for  
7       the opportunity to gain those promotional credits, is that  
8       correct?  
9       A Mr. Fitzpatrick directed my to do that. Yes.  
10       Q Mr. Fitzpatrick directed you to do it, but you, in  
11       fact, did it; isn't that correct?  
12       A Because they wouldn't give me a contract tariff.  
13       Q Mr. Inga, you were told by Mr. Fitzpatrick that if you  
14       formed companies, you could get a CSTP II plan and  
15       promotional credits, correct?  
16       A If I formed four companies, I could have taken out  
17       four 4 516 tariffs because it was only for 20 million a  
18       year.  
19       Q Mr. Inga, my question is a simple one. Please try to  
20       listen to my question.  
21       You formed the CSTP II plans for the purpose of  
22       getting the promotional credits on the CSTP II plans,  
23       correct?  
24       A No. I formed them to obtain the promotional moneys.  
25       Is that what I really wanted to do? That was my only  
1       alternative to maximize the corporate income.  
2       Q You tried to -- you, in fact, formed 20 companies, did  
3       you not, Mr. Inga?  
4       A Yes. Because I had the volume to make the commitments  
5       on all 20. I was approved on all 20.  
6       Q You had the volume in One Stop Financial that you  
7       wanted to break up to put into 20 separate CSTP II plans

8 to get those promotions?

9 A Janice Bina approved me for all 20 corporations.

10 Q **You were ultimately told you could only have four?**

11 A AT&T violated the tariff and only based me on four.

12 Q You received those four promotional credits. Isn't

13 that right, Mr. Inga?

14 A Some probably had not been paid. No.

15 Q Mr. Inga, you know how to go about ordering service

16 from AT&T, do you not?

17 A I can order CSTPII --so far as the contract tariffs are

18 concerned, AT&T has sent me a log about three inches thick

19 on how to order a contract tariff.

20 It just makes no sense at all. They want me to

21 disclose all the corporations that I'm bringing into the

22 contract. They want me to give them my entire business

23 plan. They want a whole slew of information about what

24 I'm planning to do and **then they're going to tell me:**

25 **You're going to get rejected.**

1 Q Mr. Inga, you knew how to order a contract tariff in

2 the fall of 1993, correct?

3 A No, I didn't. I never did one before. May of '93 the

4 contract tariffs came out. I had never ordered a contract

5 before.

6 Q Did you ask --

7 A. I relied on my account manager. **He said, "Don't even**

8 **apply."**

9 Q Mr. Inga, do you consider yourself a shy person that

10 takes direction from others?

11 A I consider myself not shy, but knowledgeable in

12 contract tariffs definitely.

13 **I relied on my account manager.** He told me I

14 could form different corporations prior to obtaining more

15 promo moneys. I figured at this point he was telling me

16 the truth. I just didn't apply for 516 even though it was

17 open.

18 Q The bottom line is that you didn't apply for 516

19 during the open period. Correct?

20 A **Bottom line he told me: Don't do it because you're**

21 **not getting it even if you apply.**

22 Q Mr. Inga, do you also take no for an answer from AT&T?

23 A AT&T does whatever they want to do, Mr. Whitteer.

24 Sometimes, unfortunately, you can't fight City Hall.

25 Unfortunately, it is just the way AT&T does things.

1 It was very well known throughout the industry

2 that Inga is not getting a contract.

3 Even Mr. Fitzpatrick said that to Mr. Gary

4 Carpenter. He said --it was well known. "Inga is not

5 getting a contract." It was a joke.

6 Q Mr. Inga --

7 A I made offers that were five or six points above what  
8 I was getting, 50 points less than other contracts out  
9 there, and AT&T still did not offer me something. I was  
10 willing to give ten times the commitment and take half or  
11 one third of the revenue they were giving to other  
12 customers and AT&T still said **"No, you're not getting a**  
13 **contract."**

14 Q Mr. Inga --

15 A It was fruitless.

16 Go ahead. I'm sorry.

17 Q Are you finished with your last Answer?

18 A Yes I'm done with my last answer.

19 Q Mr. Inga --

20 THE COURT: I don't classify that as an answer.

21 MR. WHITMER: Your Honor, it is late and I

22 misspoke.

23 Q Mr. Inga, at the time that you made the arrangement  
24 with Mr. Shipp to transfer the plans to CCI, you knew that  
25 some of your plans were not meeting the revenue  
1 commitments, isn't that true?

2 A **Not at all.**

3 Q Could you look at the Williams affidavit, the Williams  
4 certification that was filed in this action?

5 A Yes, I did look at it. The Williams certification  
6 bases their certification on the original commitments of  
7 the plan which those commitments have been ameliorated  
8 substantially due to time.

9 My commitments are much less now. In fact, I'm  
10 graded among the very top of the aggregators in the United  
11 States of meeting my commitment based upon AT&T's  
12 information.

13 Q **Mr. Inga, you know, do you not, that if the service,**  
14 **except for the home account -- or Mr. Yeskoo called it the**  
15 **"lead account" --is transferred to PSE, the shortfall and**  
16 **termination liabilities remain with Winback & Conserve,**  
17 **isn't that correct?**

18 A Are we referring to movement of BTNs now, or the plan.

19 Q BTN is business telephone number, correct?

20 A Yes. The locations. The individual accounts. Those  
21 are the individual locations.

22 Q I'm talking about just the BTN. Not all the  
23 obligation.

24 A Would I still be liable?

25 Q Yes.

1 A I would still be liable for shortfall and termination,  
2 yes, if there was one.

3 Q **Once Winback & Conserve has sent all this traffic**  
4 **away, Winback & Conserve does not have the capability of**  
5 **the remaining traffic on those plans to satisfy the**

6       **commitments for revenue. Correct?**  
7       A That is where you're misleading the Court, Mr.  
8       Whitmer.  
9       You seem to believe that volume requires  
10      commitment. It is not the case. Time retires commitment.

Petitioners had not only met its commitment at the time of the traffic only transfer but ---as AT&T conceded in Dec 20<sup>th</sup> 2006 brief ---were still pre June 17<sup>th</sup> 1994 grandfathered and therefore time retired commitment. Again Mr. Whitmer could not make his argument that petitioners were not going to meet commitment unless he acknowledged that the S&T obligations stayed with the plan. The important thing here is that Mr. Whitmer clearly understood that the shortfall and termination obligations stayed with the transferor plans.

3/21/95 Oral Page 117 Questioning of petitioner: **Here as exhibit T**

9       BY THE COURT:  
10      Q Do you understand --  
11      THE COURT: Let me try.  
12      MR. WHITMER: Thank you, your Honor.  
13      BY THE COURT:  
14      Q **When you were going to make the transfer to CCI, did**  
15      **you understand that CCI was going to assume that**  
16      **obligation and that you were going to remain jointly and**  
17      **severally liable for it?**  
18      A **We would both be liable, yes.**  
19      THE COURT: Very good. We'll take a short  
20      recess.

Above all parties confirmed that the Inga Companies remained jointly and severally liable and were acting within the tariff section 2.1.8. and not attempting a transaction outside 2.1.8.

3/21/06 Page 118 **Here as exhibit U**

1       MR. HELEIN: Your Honor, before you continue,  
2       would you be ruling at the end of his cross-examination on  
3       Mr. Fitzpatrick? Because I would like to have him here.  
4       I think it is very important.  
5       THE COURT: Is Mr. Fitzpatrick here?  
6       MR. WHITMER: He is not here, sir.  
7       THE COURT: Could you possibly bring him? Is  
8       that an inconvenience, to bring him?  
9       I'm not suggesting I'll order him to be  
10      testifying.  
11      Could you bring him? Is he far away?  
12      MR. WHITMER: He lives just outside of  
13      Philadelphia. **South of Philadelphia.**

Mr. Fitzpatrick actually worked out of AT&T's office in South Plainfield NJ, within 45 minutes

of the Courthouse. Mr. Whitmer was so concerned that Mr Fitzpatrick would be cross examined that he decided not explain to Judge Politan that he was actually working in NJ close to the Court house. Mr. Fitzpatrick after retiring from AT&T conceded to petitioners that AT&T counsel wrote his certification and substantially embellished its contents and took what petitioners said totally out of context. This is the reason why AT&T did not want Fitzpatrick questioned.

Questioning of petitioners by its counsel Mr. Coven:

3/21/06 Pages 131 -139 **Here as exhibit V**

18 BY MR. COVEN:

19 Q Assuming there would be a shortfall penalty -- and I  
20 know we've gone through many ways to avoid shortfall --in  
21 your contract with the traffic being at PSE, was CCI  
22 permitted under that contract to retrieve that traffic to  
23 satisfy any revenue obligations that CCI and/or Winback  
24 had?

25 **A Yes.**

1 MR. WHITMER: Your Honor, I object.

2 First of all, I'm not sure this is proper  
3 redirect. I didn't want to say that earlier.

4 THE COURT: That's all right.

5 MR. WHITMER: I object to talking about what an  
6 agreement is when there is a written document that is the  
7 best evidence.

8 THE COURT: Is there an agreement -- this is the  
9 question which has not been asked.

10 Is there a written agreement between CCI and PSE  
11 concerning that relationship and the retrieval of the  
12 accounts? Who has that agreement?

13 THE WITNESS: Thirty days' notice.

14 MR. SHIPP: I have it.

15 THE COURT: Is that part of the stuff that is in  
16 the hotel?

17 MR. SHIPP: No, sir. That happens to be here.

18 THE COURT: Would you give us the copy of that,  
19 please, now?

20 MR. SHIPP: Yes, sir.

21 THE COURT: We'll mark that.

22 I realize this is a little disjointed, but I  
23 think it is good to get. it out.

24 MR. COVEN: Your Honor, for clarification  
25 purposes, what I'm trying to establish to the Court's

1 satisfaction is what the liabilities would be with the  
2 transfers and also understanding why --

3 THE COURT: The contract should speak for itself.

4 MR. COVEN: The contract was set up the way it

5 was.  
6 THE COURT: The contract should cover that,  
7 shouldn't it, Mr. Coven?  
8 MR. COVEN: It would cover how the transfers  
9 would be effectuated, but it wouldn't necessarily explain  
10 to your Honor the business reasons by why it was  
11 structured in the way it was structured.  
12 THE COURT: The contract speaks for itself. If  
13 you want to explain it, fine.  
14 THE COURT: What do you want to number this?  
15 Plaintiffs' 1?  
16 MR. HELEIN: P-1.  
17 THE COURT: P-1. The contract.  
18 (Exhibit P-1 marked for identification.)  
19 THE COURT: Ask another question in the meantime.  
20 MR. YESKOO: I have it here, your Honor.  
21 MR. MEANOR: We found two at the same time.  
22 THE COURT: Good. Mark one P-1. Mrs. Trivino is  
23 the official marker.  
24 MR. YESKOO: Could we substitute a copy for the  
25 original?

1 THE COURT: Keep the original for future  
2 litigation and substitute a copy.  
3 THE CLERK: The contract is P-1.  
4 THE COURT: I can see it is signed. It is for  
5 future litigation.  
6 THE COURT: There it is. Next question.  
7 MR. COVEN: It is in evidence? It has been  
8 admitted in evidence?  
9 THE COURT: Yes.  
10 (Exhibit P-1 marked in evidence.)  
11 THE COURT: Any objection?  
12 MR. WHITMER: I assume Mr. Shipp would testify  
13 this is the agreement because this is not an agreement to  
14 which Mr. Inga is a party.  
15 THE COURT: Yes. Mr. Shipp will be back  
16 tomorrow.  
17 MR. WHITMER: Subject to, your Honor --  
18 THE COURT: Subject to connection.  
19 MR. COVEN: Mr. Shipp can do that Thursday.  
20 (Pause.)  
21 THE COURT: Go ahead, Mr. Coven.  
22 BY MR. COVEN:  
23 Q Why were the plans transferred to CCI and the traffic  
24 to PSE? Why not transfer all; both the plans and the  
25 traffic to PSE?  
1 THE COURT: Because he transferred it to PSE  
2 **totally. It would merge into PSE and they could never**

3 **merge it back.**  
4 **I don't mean to shortcut it, but I know the**  
5 **answer.**  
6 Next question.  
7 Q Why were you concerned about retrieving that traffic  
8 at some point?  
9 THE COURT: **Because he wanted to make a profit on**  
10 **it. He wanted to run his own company.**  
11 A We wanted our own company.  
12 THE COURT: We hold these truths to be  
13 self-evident. You have a judge that listens.  
14 Next question.  
15 MR. COVEN: Thank you, your Honor.  
16 Q When you took out new plans under Winback or 800  
17 Discounts or any of your other companies, were you ever  
18 required to give a security deposit?  
19 A No.  
20 THE COURT: Can I ask you a question?  
21 When you first started in business, were you ever  
22 required to give a security deposit?  
23 THE WITNESS: Never.  
24 THE COURT: Under the name Inga individually, or  
25 any corporate entity that you created?  
1 THE WITNESS: I never personally guaranteed any  
2 corporation and none of the corporations were ever asked  
3 for a security deposits.  
4 THE COURT: Including up to the present  
5 commitments of some --  
6 THE WITNESS: Including yesterday.  
7 THE COURT: How much did you ultimately end up  
8 with as being your total commitment or total contract,  
9 approximately?  
10 THE WITNESS: Right now, if I recast these  
11 commitments -- in my affidavit, I believe I said I was  
12 down to \$40 million, I believe, over, per year.  
13 THE COURT: How much .traffic do you actually give  
14 AT&T through all of your corporate facilities a year,  
15 approximately?  
16 THE WITNESS: Approximately 40 million.  
17 THE COURT: Next question.  
18 BY MR. COVEN:  
19 Q We've gone through how time requires commitment, not  
20 volume.  
21 In the tenth or eleventh month of the plan that  
22 was, let's say, \$1 million for the year -- we'll assume  
23 that.  
24 A Make it 600.  
25 Q 600,000?

1 A 50,000 a month is easier.  
2 Q Would it be possible in the tenth or eleventh month if  
3 there would be shortfall penalties to be assessed to bring  
4 back traffic, let's say, from PSE to CCI in one month to  
5 cover that shortfall?  
6 A As long as the commitment is made in the twelfth  
7 month, you can bring all the traffic in the twelfth month  
8 to satisfy it.  
9 Q You don't have to do it pro rata on a monthly basis?  
10 A No.  
11 THE COURT: But you can do it that way if you  
12 want to?  
13 A You can do the whole thing in the first month.  
14 Q Even if you did the whole thing in the first month,  
15 you would still have a commitment, however, though, for  
16 the balance of the year?  
17 A That's right. Because time retires the commitment.  
18 You still have to keep the contracts.  
19 THE COURT: What about termination?  
20 THE WITNESS: Termination is also assessed on  
21 year end, your Honor. The same thing. Both termination  
22 and shortfall. Termination is 35 percent of the contract.  
23 It is continuing. Shortfall. If you do 600 and commit to  
24 500, it is 100.  
25 THE COURT: If you do 35 percent less than what  
1 you committed to?  
2 THE WITNESS: Thirty-five percent is the  
3 discontinuation. If you discontinue the contract, the  
4 termination penalty is 35 percent of the amount committed.  
5 That is the penalty. Thirty-five percent of the amount  
6 committed.  
7 Shortfall is simple. If you commit 600 and do  
8 500, you're short one hundred.  
9 Q How much shortfall and/or discontinuation penalties  
10 has your company ever paid?  
11 A I've never --  
12 Q Has your company, near the end of the commitment, been  
13 in a situation where it has not satisfied the revenue on a  
14 plan?  
15 A I don't believe I have ever gone into a situation  
16 where -- I have restructured numerous times. I don't know  
17 if it was because of not forecasting meeting my  
18 commitment.  
19 There are other reasons why you take CSTP II  
20 plans and discontinue them. That is to upgrade term plans  
21 and other things.  
22 Q If Winback had a plan and none of these transfers had  
23 occurred, who would be liable if there were shortfall  
24 and/or discontinuation penalties assessed?



25 A My corporation. Winback.  
 1 Q Once you transferred the plans to CCI, would CCI also  
 2 be liable?  
 3 A **Jointly and severally.**  
 4 Q So both Winback and CCI?  
 5 A Yes.  
 6 Q Once the traffic is on PSE and end users don't pay  
 7 their bills, say, in a given month, who pays that loss of  
 8 money to AT&T?  
 9 A That is for billing. **That would be paid by PSE. They**  
 10 **would pay any bad debt charges.**  
 11 **That is different than shortfall or termination**  
 12 **charges.**

The above questioning clearly shows that the shortfall and termination obligations stay with the plans. Additionally it shows that petitioners understood that there were several ways to extinguish its S&T obligations. It also shows that petitioners planned on meeting its commitment by contracting with PSE to get the traffic back.

### **Relevant Excerpts From March 23 1995 Oral Argument**

Newark, New Jersey  
 March 23, 1995

BEFORE:

THE HONORABLE NICHOLAS H. POLITAN,  
 UNITED STATES DISTRICT JUDGE

-----  
 Pursuant to Section 753 Title 28 United States  
 Code, the following transcript is certified to be an  
 accurate record as taken steno graphically in the  
 above-entitled proceedings.

-----  
 Stanley B. Rizman  
 Official Court Reporter

1 Appearances:  
 2 FABRICANT & YESKOO, ESQS.,  
 3 BY: RICHARD C. YESKOO, ESQ., and  
 4 THOMAS CAMPBELL, ESQ.,  
 5 For Combined Companies, Inc.  
 6  
 7 PODVEY, SACHS, MEANOR, CATENACCI,

8 HILDNER & COCOZIELLO, ESQS.,  
9 BY: H.CURTIS MEANOR, ESQ., and  
10 LAWRENCE S. COVEN, ESQ.,  
11 and  
12 HELEIN & WAYSDORF, ESQS.,  
13 BY: CHARLES HELEIN, ESQ.,  
14 For the Plaintiffs.  
15  
16 PITNEY, HARDIN, KIPP & SZUCH, ESQS.,  
17 BY: FREDERICK L. WHITMER, ESQ.,  
18 and  
19 AT&T CORP.  
20 BY: EDWARD R. BARILLARI, ESQ.,  
21 For AT&T.

3/23/95 PAGE 166 -167 Here as exhibit W

Questioning of CCI's president Mr. Shipp by AT&T counsel Fred Whitmer:

1 Q Winback & Conserve had the obligation of shortfall and  
2 termination charges with respect to the plans that you  
3 attempted to acquire by the Memorandum of Understanding of  
4 October 12th, D-3 in evidence, correct?

5 A Would you repeat that? I'm not sure I understand your  
6 question.

7 Q I'll can Mr. Rizman to read it. If you don't understand  
8 it, rephrase it.

9 (Record read.)

10 A I'm still not sure I understand the question.

11 Q Let me try again.

12 You understood prior to the execution of D-3, the  
13 Memorandum of Understanding, that Winback & Conserve was the  
14 holder of approximately eight plans, correct, CSTP II plans?

15 A Yes.

16 Q Winback & Conserve or one of the other Inga companies,  
17 correct?

18 A Yes.

19 Q And you knew, did you not, there was shortfall and  
20 termination charges that were potentially associated with those  
21 plans, correct?

22 A Yes. I knew the tariff very well, yes.

23 Q You knew very well, did you not, that by signing the  
24 Memorandum of Understanding CCI was intending to take on those  
25 shortfall and termination charges, correct?

1 A Yes, sir.

2 Q You knew, also, did you not, that by the assignment of  
3 traffic from Winback & Conserve plans but not the plans to PSE  
4 that the obligation of shortfall and termination stayed with

5 **Winback & Conserve, isn't that correct?**

6 A No. I would have viewed it in the context of the analogy  
7 that you used, **that it stayed with CCI.**

8 Q It would have stayed with CCI or Winback & Conserve or  
9 Conserve or both?

10 A **Yes.**

Above AT&T and CCI are in agreement that Winback & Conserve would remain jointly and severally obligated for S&T obligations after CCI transferred "traffic only" to PSE. Joint and several liability under 2.1.8 involves only the former customer here Winback (having transferred the plan) and CCI (having received the plan). If S&T obligations transferred between CCI and PSE on the "traffic only" transfer then CCI would replace Winback as the former customer and remain jointly and severally liable and PSE would obtain the obligations.

Section 2.1.8 does not allow for previous **3<sup>rd</sup> + generations** of former customers to remain obligated---only two at a time--- The Former Customer (singular) and New Customer (singular).

**The fact that AT&T conceded in the non vacated first Politan District Court Decision that Winback was still obligated for the shortfall and termination obligations after the CCI to PSE "traffic only" transfer----- is also a clear concession that S&T obligations under 2.1.8 could not have possibly transferred from CCI to PSE.**

PAGE 175-177 REDIRECT EXAMINATION

**Here as Exhibit X**

CCI's counsel Mr. Yeskoo questions CCI's president Mr. Shipp

15 MR. YESKOO: Okay.

16 Q When you are moving transfer accounts, how do you fill out  
17 this form? Accounts only?

18 A Just as noted herein in this Exhibit P-3.

19 **Q Could you explain the difference between a lead account and  
20 an end user account?**

21 A They have different benefits and responsibilities. The 131  
22 or 181 account, which is the end user location account --is  
23 that account assigned to the individual location that allows  
24 AT&T to bill that location for its usage, collect the charges  
25 under that account number and service that account.

1 The 181 number and lead account number are set up by  
2 AT&T to be able to remit back to the customer of record any  
3 moneys that might be accrued on behalf of the plan holder or to  
4 charge shortfall penalties or liabilities associated with the  
5 plan to that plan to that account number.

6 I would say designated in discrete number set up with  
7 each individual plan.

8 **Q When you transfer an end user account, do you transfer  
9 shortfall and termination responsibilities?**

10 A No. In fact, in the January 31st transmittal you will see  
 11 in the bottom paragraph it says "This order is solely to move  
 12 the locations associated with these plans and not intended in  
 13 any way to discontinue the plans."  
 14 The reason why that was there was because we didn't  
 15 want to invoke the shortfall penalty, having the plan collapse,  
 16 without our ability to meet the annual commitments. So we  
 17 didn't want to prematurely cancel. It had to survive.  
 18 **Q Approximately how many times have you used this form to**  
 19 **transfer end user accounts as opposed to plans prior to this**  
 20 **transaction?**  
 21 **A Hundreds.**  
 22 **Q Had AT&T ever come to you and said, by the way, Mr. Shipp,**  
 23 **we want you to know you're also transferring the shortfall and**  
 24 **termination liabilities with the lead account when you transfer**  
 25 **an end user account?**  
 1 **A Never.**

## January 23, 1996 Oral Argument Transcript:

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEW JERSEY  
 CIVIL NO. 95-908

COMBINED COMPANIES, INC.,	:	
a Florida Corporation,	:	
		: TRANSCRIPT OF PROCEEDINGS
And	:	
	:	
WINBACK & CONSERVE PROGRAM,	:	
INC., and its related entities,	:	
ONE STOP FINANCIAL, INC.,	:	
GROUP DISCOUNTS, INC.,	:	
800 DISCOUNTS, INC., a	:	
Pennsylvania corporation,	:	
	:	
Plaintiffs,	:	
-vs.-		
AT&T CORP., a New York	:	
Corporation.	:	
		:
Defendant.	:	

Newark, New Jersey  
 January 23, 1996

BEFORE:

THE HONORABLE NICHOLAS H. POLITAN,  
 UNITED STATES DISTRICT JUDGE

-----  
Pursuant to Section 753 Title 28 United States  
Code, the following transcript is certified to be an  
accurate record as taken steno graphically in the  
above-entitled proceedings.

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Stanley B. Rizman  
Official Court Reporter

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STANLEY B. RIZMAN, CSR, OFFICIAL COURT REPORTER, NEWARK, N.J.

AA1324

22       Appearances:  
23       FABRICANT & YESKOO, ESQS.,  
24       BY: THOMAS D. TAMLYN, ESQ.,  
25       For Combined Companies, Inc.  
26       PODVEY, SACHS, MEANOR, CATENACCI,  
27       HILDNER & COCOZIELLO, ESQS.,  
28       BY: H.CURTIS MEANOR, ESQ., and  
29       HELEIN & WAYS DORF, ESQS.,  
30       BY: CHARLES HELEIN, ESQ.,  
31       For Winback & Conserve.  
32  
33       PITNEY, HARDIN, KIPP & SZUCH, ESQS.,  
34       **BY: FREDERICK L. WHITMER, ESQ.,**  
35       **RICHARD H. BROWN, III, ESQ.**  
36       **And**  
37       **AT&T CORP.**  
38       **BY: EDWARD R. BARILLARI, ESQ.,**  
39       **For AT&T.**  
40       .  
41       .  
42       .  
43       .  
44       .  
45       .  
46       .

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STANLEY B. RIZMAN, CSR, OFFICIAL COURT REPORTER, NEWARK, N.J.

AA1325

The FCC should be aware when reading this oral argument that the date is now months after the prospective implementation of Tr. 9229 in November of 1995. AT&T replaced Tr. 8179 with Tr 9229 in June of 1995, and---as the AT&T Meade certification stated---would be on a prospective basis. However the FCC will see that Mr. Whitmer, Mr. Brown and Mr. Barillari lie to the District Court that 9229 is still pending

25 If the plaintiffs in this case were so interested  
1 in expediting the procedure in the FCC, they had the right  
2 and, indeed, I think, the direction of this Court. They  
3 could have filed a Complaint in the FCC pursuant to this  
4 Court's primary jurisdiction decision to say what AT&T had  
5 done was an unreasonable practice under the Act and it  
6 constituted unreasonable and unjust discrimination.  
7 THE COURT: But you have to admit, do you not,  
8 that I was very clear in noting that you had before the  
9 FCC an existing application dealing **with the very issues**.  
10 To say they could have or should have or would have really  
11 doesn't, in my judgment, solve anything.

AT&T knew it had lost its Substantive Cause Pleading and knew 9229 would have been prospectively applied but instead of explaining this to Judge Politan AT&T counsel looked to evade the issue....

25 THE COURT: Tell me about what happened at the  
1 FCC.  
2 MR. WHITMER: I think Mr. Meanor's affidavits  
3 have told you that in some respects. I will give it to  
4 you in –  
5 THE COURT: Why was it necessary and -- why was  
6 it necessary to take the rather simple, uncomplicated  
7 issue that was involved in both this case and in the  
8 filing with the FCC, withdraw it after it had been there a  
9 couple of -months, and replace it with 62 or 72 or 82 pages  
10 of -- give that to me -- where -- I would like to know  
11 where it is in that submission. In what page of that  
12 submission is this issue dealt with and why?  
13 That is my problem. I'll be perfectly honest  
14 with you.  
15 MR. WHITMER: Let me respond to that this way,  
16 your Honor.  
17 THE COURT: Here it is. It's an inch thick.  
18 MR. WHITMER: Yes, it is.  
19 THE COURT: The other one was one page.

Above AT&T replaced a few page Tr 8179 filing with the several dozen page tr. 9229 filing.

19 THE COURT: This was not an evolution. This was  
20 an explosion. I mean, "evolved" means like one to three,  
21 three to seven. This is from a one-page submission to 60  
22 some-odd pages.  
23 I would appreciate your telling me on which one  
24 of these pages, which I think are unnumbered, the issue  
25 that is involved in this case is.

1 MR. WHITMER: **I think I've given you the answer**  
2 **to that already.**

3 THE COURT: Where is it?

4 MR. WHITMER: That is the way -- the direction  
5 that AT&T --

6 THE COURT: **No. I want an answer to that**  
7 **specific question.**

8 MR. WHITMER: **I've answered that question.**

9 THE COURT: **If you answered it, I haven't heard**  
10 **the answer or I don't understand the answer. Okay. Where**  
11 **was it in here?**

12 MR. WHITMER: Your Honor, there is not a single  
13 page in that submission that cues up precisely the issue  
14 that is here. That we've said. I say it now. I'm not  
15 ducking the question.

16 THE COURT: What was the other submission? Let's  
17 talk about the other submission. Get me the other  
18 submission.

19 MR. WHITMER: The other submission directed  
20 itself specifically to this case.

21 THE COURT: Yes.

22 MR. WHITMER: The Commission, in discussions with  
23 AT&T broadened the issue. **AT&T took the tack -- took the**  
24 **tack to try to address the question differently.**  
25 But let me respond to a broader question of the  
1 Court. A broader concern.  
2 If the Commission, your Honor --if the  
3 Commission --

4 THE COURT: **Are you telling me the Commission**  
5 **couldn't answer that question?** Is that what you're saying  
6 to me, the Commission could not answer that question?

7 MR. WHITMER: No, your Honor. Of course not.

8 THE COURT: What are you saying? The question  
9 was there. I mean, if somebody brings a question before  
10 me -- put aside for the moment that I am a judge, because  
11 I'm perhaps more formal than the FCC.

12 MR. WHITMER: That is a big "perhaps," your  
13 Honor. That is a very big "perhaps."

14 THE COURT: But if you come into chambers and I  
15 don't have my robe on and you give me Issue A, I don't  
16 tell you to give me the invention of the time machine. I

17 say I want to talk about Issue A.  
 18 You very well knew -- your client very well  
 19 knew -- let me just finish. Everybody very well knew  
 20 where I was coming from in my opinion of May 19th about  
 21 primary jurisdiction.  
 22 There is no question in my mind, at least, to the  
 23 English that I used, where I was coming from.  
 24 I suspect most people, given a fair reading to  
 25 this very short document that I produced here, some 25  
 1 pages of opinion, knew what it was all about because there  
 2 was only one section of it, about two or three pages, that  
 3 dealt with primary jurisdiction.  
 4 I felt very comfortable with the fact that, A,  
 5 your client had submitted the issue to the FCC, that the  
 6 FCC was going to apply its expertise to the issue **and that**  
 7 **whatever that resolution was would come back to me and**  
 8 **then we'd determine what to mold, if anything, here.**  
 9 MR. WHITMER: That is still true, your Honor.  
 10 THE COURT: When will it happen?  
 11 MR. WHITMER: That is still true. **"If" the tariff**  
 12 **submission that is before you which you described as the**  
 13 **explosion is, in fact, put into place, your Honor, that**  
 14 **will --by its being permitted to go into effect, in**  
 15 **effect, your Honor is saying that AT&T's position with**  
 16 **respect to the transfer, that we refuse to give here, was**  
 17 **also correct.**  
 18 Why is that?  
 19 THE COURT: Why is that?  
 20 MR. WHITMER: Why is that?  
 21 THE COURT: Why is that?  
 22 MR. WHITMER: It's easier for me to ask the  
 23 question and then answer it.  
 24 THE COURT: You ask the question and answer it.

Remember at this point 9229 is already in effect prospectively but AT&T counsel states "if it is put into place. AT&T counsel not only knew that 9229 went into effect prospectively but had the Meade certification which conceded that it was prospective only--- but Whitmer still lied to the Judge and Mr. Barrillari and Richard Brown stayed there and were complicit with Whitmer's attempt to scam Judge Politan. AT&T was seeking to delay and in the mean time had contracted out with a telemarketing firm Transtech to solicit petitioners' accounts off its plans.

1/23/96 Oral page 16 **Here as Exhibit BB**

7 The answer to why is that --is what AT&T -- what  
 8 AT&T is doing with respect to the broader submission to  
 9 the Commission is, in effect, **setting up a different**  
 10 **tariff set of procedures which will address the question**



11 and problem that these transactions, as are put into issue  
12 in this case, have raised.  
13 “If” the Commission permits AT&T to go forward with  
14 this tariff submission, as I think they will, that in and  
15 of itself. means that the practices that are set forth in  
16 the expanded --in the expanded submission are reasonable  
17 practices or lawful practices, as the Commission has  
18 worked with them and has permitted them to go into effect.

Again the date of this transcript is Jan 1996. Tr, 9229 was introduced as a prospective tariff change in June of 1995 and went into effect on a prospective basis on November 9<sup>th</sup> 1995- see exhibit P in petitioners 9/27/06 filing.

However Mr. Whitmer and Mr. Barillari despite knowing that the 9229 issue was already in place--to further stall the proceedings---stated “If the Commission permits AT&T to go forward with this tariff submission, as I think they will”

**Think they will!!!!**

Mr. Whitmer knew all along that 9229 went into effect prospectively months earlier and would not control petitioners “traffic only” transfer and therefore this issue was not pending before the FCC. Whitmer, Brown and Barillari simply lied to the Judge that the Tr 9229 issue was still pending at the FCC —pure and simple to stall the case.

1/23/96 Page 17 Here as Exhibit CC

1 MR. WHITMER: That is the reason why --  
2 THE COURT: They don't want to answer – that submission will not answer it retrospectively, but merely prospectively.  
3 MR. WHITMER: Your Honor, let me do it a different way.  
4 THE COURT: Sure.

The Judge specifically asks Mr. Whitmer if the FCC will be bound to address the issue prospectively---- when in reality the FCC had already addressed the issue prospectively months prior. Instead of telling the Judge the truth Whitmer again changed the subject.

Now see page 1/23/96 Oral page 18-21 **Here as Exhibit DD**

14 MR. WHITMER: Your Honor, what will -- what has  
15 resulted in what is before you is -- what you called the  
16 "exploded tariff submission" is, in fact, a document which  
17 does not on its face and pursuant to its own terms  
18 adjudicate the controversy between AT&T and these  
19 plaintiffs. That's true. But that's really not  
20 important. It's not.  
21 THE COURT: It is not important to who?  
22 MR. WHITMER: It is not important to you. It is  
23 not important to me. It is not important to these

24 plaintiffs.<sup>1</sup> It is not important because the fact that the  
25 Commission would permit AT&T to put into place the tariff

1 submission which you have in your hands now would, by the  
2 act of doing that, mean that AT&T was appropriate and  
3 proper in dealing with the problem. That would mean that  
4 it would not have been an unreasonable practice. It was  
5 not an unreasonable practice.

6 THE COURT: That I got to do by inference after  
7 they agreed to permit you to put into focus this 60-page  
8 thing.

9 I always thought primary jurisdiction -- excuse  
10 me for saying so. I always thought primary jurisdiction  
11 meant if there was a matter that had to be adjudicated,  
12 adjudicated, adjudicated before a court, that if there was  
13 another body which was charged with expertise in that  
14 area, that it was appropriate to cede the power of this  
15 Court to that tribunal to get their expertise on the issue  
16 which had to be adjudicated.

17 MR. WHITMER: Your Honor --

18 THE COURT: Wait a minute.

19 MR. WHITMER: **You'll get that.**

20 THE COURT: You say I'll get that. I'm not sure

21 I'm going to get anything. I don't know what you're going  
22 to do here.

Page 19 Continued....

23 **Let me ask you this question. Where is this**  
24 **thing now? (Referring to brief.) What phase of the**  
25 **proceeding?**

1 MR. WHITMER: **It is pending, as I understand.**

2 THE COURT: **Pending.** I have 324 cases pending  
3 here. Some are ripe and will be determined very promptly,  
4 like the jury trial I'm doing today. Others may not be  
5 reached for another year and a half for two years. Where  
6 does this end?

7 I recognize you have been tabbed as the expert in  
8 this area. We'll get to you. (Remark addressed to Mr.  
9 Helein.)<sup>2</sup>

10 **MR. WHITMER: The answer to your question I don't**  
11 **think can be given with the kind of precision that you**

---

<sup>1</sup> Whitmer's March 30<sup>th</sup> 1995 certification to the same Judge Politan strongly argued that AT&T's Transmittals before the FCC were to resolve the issue. Now after AT&T lost the Substantive Cause Pleading on 8179 and Tr 9229 was put into place prospectively, AT&T counsel says it is **no longer important.** Judge Politan obviously wasn't buying AT&T's scam.

<sup>2</sup> Mr. Helein --petitioners counsel was listening to these lies and was trying to get the Courts attention.

12     **want.**  
13     THE COURT: Can you give me something with the  
14     precision of an action as distinguished from a scalpel?  
15     You like that, don't you?  
16     MR. WHITMER: I do like that, your Honor.  
17     THE COURT: Write it down so you use it the next  
18     time you have to argue.  
19     MR. WHITMER: I'll have to remember it was you  
20     who said it so I can either quote you –  
21     THE COURT: You can steal from me all you want.  
22     Everything but my wife you can have.  
23     MR. WHITMER: Actually, I learned from an expert  
24     witness of mine many years ago that precision sometimes  
25     only mimics accuracy. So that being precise about  
1     something is not necessarily being accurate. I can't be  
2     precise. I'm going to try to be accurate.  
3     **The Commission does not have a rigid timetable**  
4     **with respect to deciding such things, to be fair about**  
5     **this.**  
6     On the other hand -- and I come back to something  
7     I've said earlier. On the other hand, if these plaintiffs  
8     filed a Complaint in the Commission to tee up this issue  
9     under the doctrine of primary jurisdiction, as the Court  
10    ruled earlier, that sets in motion time periods to permit  
11    the issue to come to a head in the Commission. This  
12    Court -- this Court ruled sensibly.  
13    THE COURT: In other words, if they tee it up  
14    tomorrow morning, when will they get an adjudication?  
15    MR. WHITMER: I don't know, your Honor. That is  
16    a very honest answer. I don't know.  
17    THE COURT: We lost about -- since May, let's  
18    say -- since March or April or May, **we lost almost a year.**

1/23/96 Pages 26-31 **Here as Exhibit EE**

16    The Commission's resolution of the tariff  
17    submissions that AT&T has made, including the one that is  
18    before your Honor in what you call the exploded version,  
19    the number of which for some reason I can't keep in my  
20    head, but that tariff submission, your Honor, **once it goes**  
21    **into effect, even if it doesn't as a matter of law have**  
22    **retrospective application.** And even if it doesn't as a  
23    matter of law decide this case and even if it, as a matter  
24    of law, doesn't require you to make a finding in a certain  
25    way in this case, it will, as a matter of law and as a  
1    matter of common sense and as a matter of legal logic,  
2    give you guidance.  
3    THE COURT: What guidance would it give me?  
4    MR. WHITMER: Well, if the Commission permits the

5 tariff submission to go into effect  
6 THE COURT: This one?  
7 MR. WHITMER: Yes, sir.  
8 THE COURT: The fat one.  
9 **MR. WHITMER: That will tell you, I think -- that**  
10 **will tell you that AT&T can appropriately forbid people**  
11 **from fractionalizing their service.**  
12 **We used that term before. That you can't**  
13 **separate the plan from the service.**<sup>3</sup>

**Politan understands that he is getting a con job from Mr. Whitmer and continues his pursuit of what actually is going on:**

14 THE COURT: Where in here would that say that?  
15 MR. WHITMER: Well, your Honor –  
16 THE COURT: Where?  
17 I'm just a poor country judge, okay? I don't go  
18 to Washington. I don't go to the FCC. But I've been  
19 trained to read and write the English language and no  
20 other. You're saying --  
21 MR. WHITMER: I doubt that.  
22 THE COURT: The FCC permits this to go into  
23 existence. This is going to give me guidance. Well, my  
24 only question is: **Whence in this Bible is the guidance?**  
25 That is all I want to know. **Where is it?**

1 MR. WHITMER: If you look in Mr. Meade's second  
2 supplemental affidavit, your Honor, I think he gives you  
3 direction.  
4 THE COURT: Gives me a direction.  
5 Let's get Mr. Meade's supplemental certification.  
6 MR. WHITMER: The second --  
7 THE COURT: The second supplemental  
8 certification. Give me that. Do I have it here?  
9 MR. WHITMER: I have it.  
10 THE COURT: Mr. Meade's certification dated .—I  
11 think I have it -- March 6th, or is there one after that?  
12 **MR. WHITMER: It is November 28, 1995.**  
13 THE COURT: November 28. We'll get that. Be  
14 patient with us.

---

<sup>3</sup> Mr Whitmer is again arguing that 2.1.8 does not allow a traffic only transfer only a plan transfer. Mr. Whitmer obviously knew that 9229 already went into effect prospectively but argued: “even if 9229 went into effect prospectively” that would give the Court guidance that the tariff did not permit traffic only transfers. A pure Con job on the Court! Tr. 9229 did not prohibit ---so called--- “fractionalization” i.e. “traffic only” transfers in any event. Tr. 9229 imposed deposit requirements upon the transferor because S&T obligations do not transfer.

15 MR. WHITMER: Specifically.  
16 THE COURT: Let me get it first.  
17 MR. WHITMER: I have it here. You can have my  
18 copy.  
19 THE COURT: This is the fat supplemental.  
20 Could I borrow a copy of yours and it will make  
21 it faster?  
22 MR. WHITMER: I'll hand it up to your Honor.  
23 THE COURT: Sure.  
24 (Document handed to the Court.)  
25 MR. WHITMER: **If you look at paragraph 15**<sup>4</sup>

1 THE COURT: Paragraph 15.  
2 MR. WHITMER: You can look at everything,  
3 obviously.  
4 THE COURT: You say look at paragraph 15.  
5 "On October 26, 1995, AT&T Corp. filed Tariff  
6 Transmittal No. 9229 with the FCC. Transmittal No. 9229  
7 **addresses the problem implicated in the CCI-PSE**  
8 **transfer the segregation of assets (locations) from**  
9 **liabilities (plan commitments)** in the following  
10 manner. (Relevant pages of Transmittal 9229 are attached  
11 hereto as Exhibit E.) Section 2.5.8.B (Shortfall Deposits)  
12 gives AT&T the right to demand a deposit to cover  
13 shortfall charges in the event: a) the term commitment is  
14 greater than one year; b) **the customer is asked to remove**  
15 **locations (by transfer or otherwise) such that the**  
16 **remaining locations would generate charges less than 80**  
17 **percent of the revenue commitment; and c) the customer's**  
18 **net assets are insufficient to secure against the risk of**  
19 **shortfall or the customer's financial responsibility is**  
20 **not a matter of record. Section 2.1.8 (Transfer of**  
21 **Service) of Transmittal No. 9229 specifies that AT&T has**  
22 **the right to reject the requested transfer if either party**  
23 **fails to pay a required deposit.**"  
24 That's it.  
25 MR. WHITMER: **Yes, sir.** Irrespective whether  
1 that is prospective -- may I have it back?  
2 THE COURT: Sure.  
3 (Document handed to Mr. Whitmer.)  
4 THE COURT: We've got it, also. In fact, we even  
5 had it marked in pen. Just to show you all the tricks of  
6 the Court.  
7 All right. Be that as it may, let me hear from

---

<sup>4</sup> Meade Concession: Exhibit N in petitioners 9/27/06 filing, see paragraph 15 and 16 of Meade certification explaining how 2.1.8 works (plan obligations do not transfer) and how AT&T was to address this problem of separating accounts from liabilities.

8 Mr. Helein for a minute about all of this.  
9 What is your commentary, Mr. Helein? I've got to  
10 get on with a jury trial.  
11 MR. HELEIN: It will be brief, your Honor.  
12 THE COURT: I have all the papers. I have masses  
13 of papers.  
14 Go ahead.  
15 MR. HELEIN: Thank you, your Honor.  
16 First of all, I would just simply like to point  
17 out that Mr. Meade made one, probably, truthful statement  
18 in the certification.  
19 THE COURT: Let's not start with that, please.  
20 Just say -- I don't want to get into the throwing issue.  
21 If I want to have dirt, I'll put people on the stand.  
22 I'll charge people who lie -- send them over to the U.S.  
23 Attorney's office to be prosecuted. We're not in that  
24 stage.  
25 MR. HELEIN: **Mr. Whitmer said 9229 addresses the**  
1 **issue.** He read from that. Mr. Meade in the following  
2 paragraph of the second supplemental certification,  
3 **paragraph 16, admits the transfer of 9229 will not apply**  
4 **to the Court as referred to the FCC back in May.**  
5 The fact is that --  
6 THE COURT: **Then the matter is not before the**  
7 **FCC.**  
8 MR. HELEIN: **No, it is not, by Mr. Meade's own**  
9 **certification.**<sup>5</sup>

**March 25, 1996 Oral Argument**

B E F O R E:

THE HONORABLE NICHOLAS H. POLITAN,  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> AT&T's Mr. Whitmer kept changing the subject but Judge Politan knew all the AT&T counsels were trying to scam him and finally Whitmer tries to pull another fast one on Judge Politan by directing him to paragraph 15, but petitioners counsel pointed out to Judge Politan that Mr. Meade conceded that the 9229 would be prospective only in paragraph 16. As the FCC has seen Whitmer earlier stated that the issue was **still pending** before the FCC but of course Whitmer, Barillari and Brown all knew that was an egregious lie as they knew 9229 was introduced in June and enacted in November 1995 and of course all of AT&T's counsel in Jan 1996 had read the November Meade certification stating 9229 was prospective. AT&T simply tried to scam the Court.

At this point the second Judge Politan Decision has now been issued (exhibit in petitioners 1/31/07 filing). AT&T is arguing to stay the case and again arguing for an increased injunction bond due to shortfall obligations which it **concedes stay with the Transferors plans after the traffic only transfer.**

Judge Politan by this time clearly understood that shortfall and termination obligations stayed with the plan based upon the testimony and Meade's certification which explicitly stated how AT&T was going to handle the separation of so called assets (accounts) from the Shortfall liabilities.

Judge Politan also knew that the CSTPII/RVPP plans were immune from shortfall due to being pre June 17<sup>th</sup> 1994 issued and to follow challenges AT&T to prove otherwise. AT&T of course had no argument to counter petitioners and never presented the facts that Judge Politan stated he would entertain at any time to increase the injunction bond ...

3/25/96 page 3-4 **Here as Exhibit FF**

1 THE CLERK: Combined Companies versus AT&T Corp.  
2 95-908. Please note your appearances for the record.  
3 MR. MEANOR: H. Curtis Meanor, Podvey, Sachs, et  
4 cetera, and Charles Helein for Winback & Conserve, One Stop  
5 Financial, Group Discounts, et cetera.  
6 MR. YESKOO: Richard Yeskoo for Combined Companies.  
7 MR. WHITMER: Pitney, Hardin, Kipp & Szuch by  
8 Frederick L. Whitmer for AT&T Corp.  
9 With me today and arguing on behalf of AT&T is  
10 Edward R. Barillari of the AT&T Law Department.  
11 THE COURT: Mr. Barillari, this is the first time I  
12 heard you in these series of cases.  
13 MR. BARILLARI: I don't think so, your Honor.  
14 THE COURT: I heard you once before, didn't I?  
15 MR. BARILLARI: Yes.  
16 THE COURT: Good afternoon. Nice to see you.  
17 MR. BARILLARI: Thank you, Judge.  
18 Your Honor, we bring this application because AT&T, if  
19 it is forced to abide by your Honor's order, will be placed in  
20 **a financial position from which it may not be able to recover.**  
21 THE COURT: Let's get to that. Let's get to that.  
22 Let's get right to it.  
23 Number one, am I correct that all of the telephone  
24 charges that are emanated from this transaction, or created  
25 through this transaction, will be billed directly by AT&T to  
  
1 the customer and **the customer will pay AT&T directly? Correct**  
2 or incorrect?  
3 MR. BARILLARI: That's correct to date, your Honor.  
4 THE COURT: Wait a minute. Next question.

5 If AT&T is not paid in a timely fashion, do they have  
6 the right to terminate that service?  
7 MR. BARILLARI: They have the right to terminate the  
8 service from which the charges are emanating?  
9 THE COURT: **Yes. So in terms of granting service,**  
10 **quote, unquote --in terms of granting service, they are as**  
11 **protected as they are with any other customer they deal with,**  
12 **me, Mr. Rizman or anybody else.**

Judge Politan understood that AT&T's cost for service is fully covered. Mr Barrillari then claims that petitioners will not meet their shortfall commitment that obviously remains with the plan. AT&T's focus was on its alleged potential to receive non rendered service i.e. (shortfall charges)

Pages 5-10 Here as Exhibit GG

Page 6 25 MR. BARILLARI: They're not going to meet their commitment.

1 MR. BARILLARI: As a result the plan is going to shortfall.  
2 THE COURT: You'll have a shortfall.  
3 In my opinion in this case I suggested to you and I  
4 suggested to AT&T that if they were unhappy now that **the bond**  
5 **is being posted, you have every right to come before me to**  
6 **present facts and I would hold a hearing in that regard to**  
7 **increase the amount of the bond** if I was convinced, in my  
8 discretion, that more bonding was necessary to ensure that AT&T  
9 would not be harmed by my injunction, if it later turned out my  
10 injunction was improperly granted and I did that.  
11 I will tell you I have made a finding and I think it  
12 is in my opinion that I don't think what AT&T has produced to  
13 me at this juncture evidence of sufficient clarity for me to  
14 make an intelligent judgment. **With all due respect, it is a**  
15 **bunch of facts thrown against the wall. Whatever sticks,**  
16 **sticks. Whatever doesn't stick, doesn't stick.**<sup>6</sup> I don't mean  
17 that disrespectfully.

18 MR. BARILLARI: I understand.  
19 THE COURT: Please, I don't. But what I'm saying to  
20 you is, if you would like to, I have no objection to your

---

<sup>6</sup> Exactly—all AT&T did was throw “it” up against the wall to see what would stick! Just like its newly created “proposal defense” nonsense and its “what all the AT&T counsels were referring to as obligations staying with CCI were not actual obligations they were joint and several liability obligations” and traffic only means zero obligations transfer. Absolute lies and nonsense.



21 coming in on a full factual hearing and say we want more on the  
22 bond and **present testimony, facts, figures, expert testimony,**  
23 **if you would, or such other testimony you deem appropriate to**  
24 **convince me that I should increase the amount of the bond.**  
25 **That is an open door for you at all times. Today, tomorrow,**

Page 7

1 **the next day, next week, next month, next year or whenever.**  
2 But I'm not going to change my opinion on the injunction.  
3 I granted the injunction for the reasons that I've  
4 expressed. I'll stand or fall on what I express. You may  
5 disagree with me. You have absolutely every right to take an  
6 appeal to the Third Circuit. They may or may not reverse me.  
7 **Hopefully, they will not because I think I'm right. But on the**  
8 **issue of the bond I'm certainly wide open.**  
9 Let the record clearly reflect the doors of this Court  
10 are as open as they can be to let AT&T come back in here and  
11 create a record on which I can make a judgment as to whether or  
12 not an additional bond is necessary to protect AT&T's interest.  
13 MR. BARILLARI: Your Honor, my concern would then be  
14 if we made a that application after the transfer was set or  
15 accomplished and your Honor decided -- assuming you decided  
16 that our application for a security deposit in the neighborhood  
17 of 10 to 15 million dollars as the shortfall that may become  
18 due and owing would result --at that point in time it would be  
19 difficult for us -- if plaintiffs were unable to post that  
20 considerable bond, we'd be put in the position of having to go  
21 back and retransfer those customers back to AT&T, I would  
22 assume.  
23 THE COURT: I deal with the facts. I deal with the  
24 facts as they come back. The facts are dynamic. They change  
25 from time to time.

Page 8 continued.....

25 MR. BARILLARI: **Things are panning out. These things**

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1 **would hit shortfall soon.**  
2 THE COURT: Get in to see me soon. I'll schedule a  
3 hearing at your convenience. My doors are open. When you  
4 marshal the facts and get the facts together and get the  
5 experts together and get the testimony together, I'll be happy  
6 to hear you.  
7 MR. BARILLARI: Your Honor, might I request that  
8 pending our scheduling of that hearing that we be granted a  
9 48-hour stay to file an appeal.  
10 THE COURT: No. You can file an appeal tomorrow. You  
11 can go to a court tomorrow morning. You can go see a single

12 judge, I guess. They may or may not grant it. I've had this  
 13 case for a long time.  
 14 MR. BARILLARI: I understand that.  
 15 THE COURT: I put a considerable amount of work and  
 16 effort in and given it my best discussion.  
 17 MR. BARILLARI: No doubt.  
 18 THE COURT: **Your client was wrong.** You have the right  
 19 to do it. I'll not backtrack on what I've done. Part of my  
 20 decision dealt with the fact that I said in there whatever I  
 21 said; about the fact that **there was a delay of some seven or**  
 22 **eight months or nine months before the Federal Communications**  
 23 **Commission as a result of actions which I felt were -- whatever**  
 24 **I said in the opinion -- dilatory.**  
 25 You may disagree with me on that.

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1 MR. BARILLARI: It is sometimes difficult working with  
 2 the FCC in getting things done on a timely basis. I don't  
 3 think it was done purposely.  
 4 THE COURT: I don't think the opinion even says  
 5 "purposely." Does it?  
 6 MR. BARILLARI: I don't believe so.  
 7 THE COURT: It doesn't go that far. I would never do  
 8 that. **But what I'm saying is there was an inordinate delay of**  
 9 **the process of that which was a rather simple issue before the**  
 10 **FCC. I made a reference to that very specifically in the**  
 11 **opinion. I hope whoever sees this case on appeal will read my**  
 12 **decision, as they always do.**

#### **Here as Exhibit HH is Page 13-14**

20 MR. BARILLARI: Your Honor, one technicality so we're  
 21 clear. It is in our power to make the transfer. So the Court  
 22 understands, we may need certain information from Mr. Shipp or  
 23 Mr. Inga to make sure that happens properly.  
 24 THE COURT: **I'm sure you'll do what is appropriate.**  
 25 What I'm saying to you is the plaintiffs or the defendants --  
 1 **the plaintiffs are not doing anything to change the status quo.**<sup>7</sup>  
 2 It is up to you to implement it. I guess technically you're  
 3 correct in asking for a stay so they don't seek to hold you in

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<sup>7</sup> After having read the Meade certification concession and having heard all the testimony Judge Politan clearly understood that 2.1.8 allowed traffic only transfers and that the S&T obligations stayed with the plan. Judge Politan therefore stated that petitioner's transaction **was not doing anything to change the status quo regarding 2.1.8.**

4 contempt of my order which I understand. As I said, you got  
5 until tomorrow. I've signed the orders.  
6 MR. MEANOR: Mr. Inga and Mr. Shipp are both in court.  
7 If you can give us a witness room to get the information they  
8 need right now --  
9 THE COURT: I'll be happy to put you in the jury room,  
10 if you need it.  
11 MR. WHITMER: Your Honor, Barillari and Whitmer are  
12 not the people to be getting information as to how to transfer.  
13 THE COURT: Why don't you work it out?  
14 We deal with laws. Not transfer.  
15 THE COURT: Tell them who to transfer to get the  
16 information, which you should. You fellows should settle the  
17 case.  
18 MR. WHITMER: Your Honor, that effort -- the door is  
19 open to that effort any time as long as reason prevails.  
20 THE COURT: Reason is in the mind of the beholder and  
21 the perception of the sender.  
22 MR. WHITMER: Reason is objective, your Honor.  
23 Perspective can sometimes be unreasonable.  
24 THE COURT: Nice seeing you, Fred.

AT&T's counsel has done nothing but fabricate total nonsense for defenses, even going so far as to obviously pressure a 22 year AT&T branch manager (Mr. Williams) to certify to something that he (Mr. Williams) had to know was an egregious misrepresentation regarding "insisting" on shortfall deposit requirements—which the tariff clearly stated otherwise.

Judge Politan recognized early on that AT&T wanted all aggregators out of business. March 8<sup>th</sup> 1995 statement from judge Politan at page 37:

THE COURT: There is no question there is a war going on between the aggregators and AT&T. To not recognize that is to close your eyes to the facts. The facts are there is a war. I think **AT&T would be just as happy if there were no aggregators.**

Yes AT&T was determined to put all aggregators out of business and it did.

Respectfully Submitted  
One Stop Financial, Inc  
Winback & Conserve Program, Inc.  
Group Discounts, Inc.  
800 Discounts, Inc

/s/ Al Inga

